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ABSTRACT

Designed to assist administrators faced with representing management's position in the collective bargaining process, this paper synthesizes information on the history, legal basis, processes, and trends of collective bargaining in the United States. Section I provides a brief history of collective bargaining, highlighting major federal and state laws and looking at changes in the number and proportion of union members in the U.S. labor force between 1900 and 1980. Section II discusses the legal basis for collective bargaining in the U.S. provided by the Wagner Act, which deals with rights to join a union and to bargain exclusively, and the Taft-Hartley Act, which covers unfair labor practices. Section III describes major features of the collective bargaining process; outlines the main concerns addressed in union-employer agreements; and identifies the stages involved in collective bargaining, as well as the steps leading up to the negotiation stages of the process. An overview of trends in collective bargaining in higher education between 1969 and 1980 is presented in section IV, which includes a comparison of the growth of the three major unions for higher education. Finally, section V provides suggestions for the college administrator to help eliminate or alleviate potential problems in collective bargaining. (HB)

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COLLECTIVE BARGAINING AND HIGHER EDUCATION:

AN OVERVIEW WITH

GUIDELINES FOR THE COLLEGE ADMINISTRATOR

JC 850 044

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ABSTRACT

Collective bargaining in higher education has undergone tremendous growth during the past 15 years, yet many college administrators are unfamiliar with the history, legal requirements, and/or scope of collective bargaining in the United States. This article presents a synthesis of information about the history, legal basis, processes, and trends of collective bargaining, and concludes with suggestions intended to assist administrators faced with representing management's position in the bargaining process.

INTRODUCTION

Collective bargaining, even though firmly entrenched in business and industry for over forty years, has only within the past decade begun to find acceptance on the campuses of our nation's colleges and universities. When the first faculty bargaining contract was signed by the City University of New York and the National Education Association (NEA) in 1969 (Carnegie Council, 1977), one of the last bastions of anti-union sentiment was breached, opening the way for faculty members to bargain collectively with private institutions in all fifty states and with public institutions in over half of the states (28 by 1981). This paper will examine this relatively new phenomenon, with which higher education's administrators will have to deal more and more in the future. Indeed, collective bargaining promises to be "a major focus of controversy in post-secondary education for the foreseeable future" (Kaplin, p. 296). To provide structure, the article will be divided into five sections, as follows:

I. A brief History of Collective Bargaining in the United States

II. Legal Basis for Collective Bargaining and Present Laws

III. The Process of Collective Bargaining

IV. Trends in Collective Bargaining in Higher Education, 1969-1980

V. Suggestions for the College Administrator Involved in Collective Bargaining

Due to the nature of the beast (it seems to have a voracious appetite), collective bargaining is an issue with which most post-secondary administrators will have to become familiar. Hopefully, this article will help "shed some light" into the cave where the beast resides.

I. A BRIEF HISTORY OF COLLECTIVE BARGAINING IN THE UNITED STATES

> Collective bargaining is concerned with the relations between employers, acting through their management representatives, and organized labor. It is concerned not only with the negotiations of a formal labor agreement but also with the day-to-day dealings between management and the union. . .It involves the process of union organization of employees; negotiation, administration, and interpretation of collective agreements covering wages, hours of work, and other conditions of employment; engaging in concerted economic action; and dispute settlement procedures. (Beach, pp 126-126)

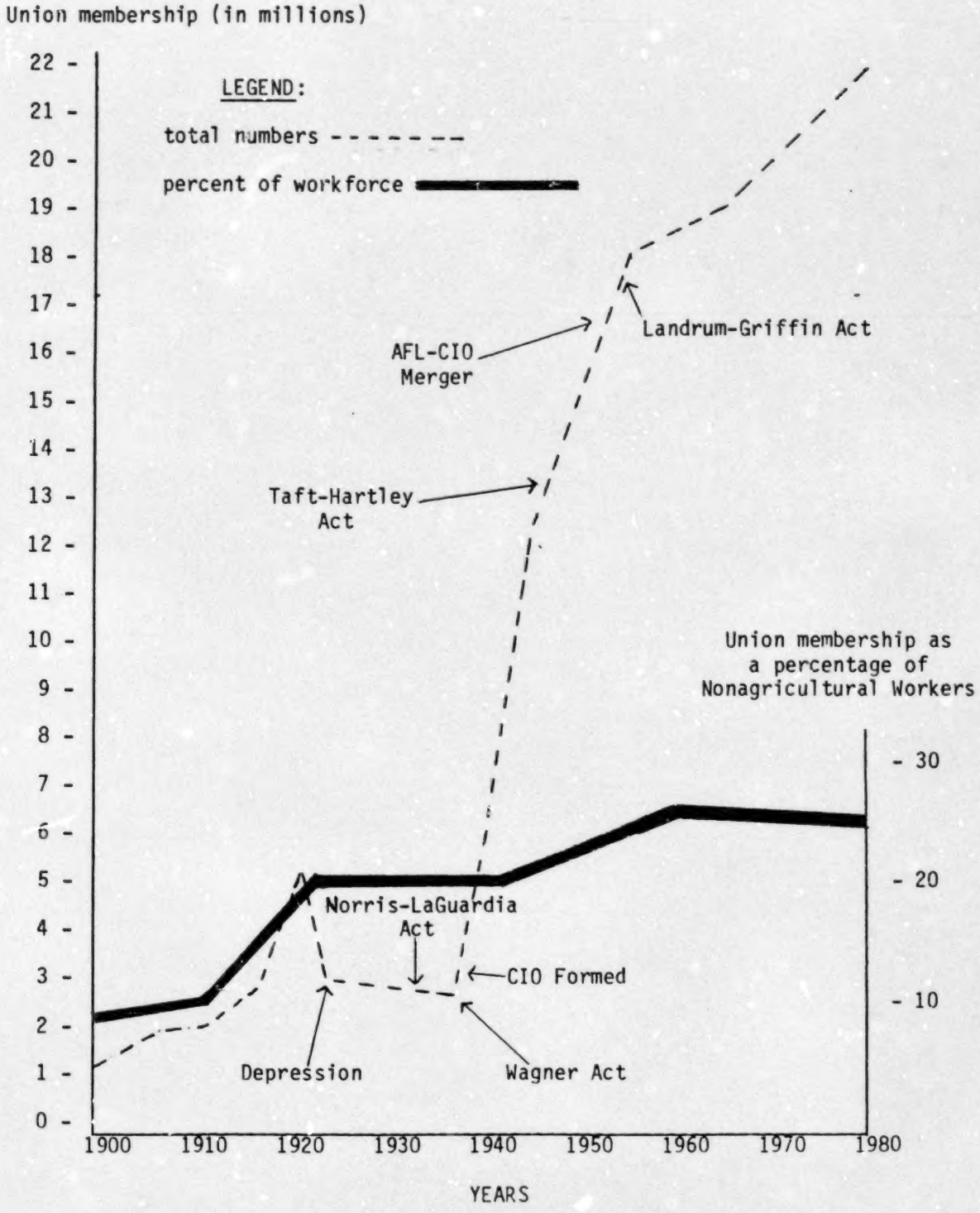
At present in the United States, labor-management relations are heavily regulated by both Federal and state labor laws; a state of affairs which began in 1932 with passage of the Norris-LaGuardia Act. Prior to that time, the policy

of the federal government had been to leave the two parties (employers-employees) alone and to exert a minimum amount of influence, which left employers "virtually unrestrained in their behavior toward unions" (Dessler, p. 449). The Norris-LaGuardia Act, which "guaranteed to each employee the right to bargain collectively 'free from interference, restraint, or coercion'" (Dessler, p. 451), defined permissable union activities in very broad terms, yet failed to appease pro-union forces. In response to growing pressure from labor, the National Labor Relation (or Wagner) Act was passed in 1935, "adding teeth to the Norris-LaGuardia Act" (Dessler, p. 451) by:

1) Banning unfair labor practices.
2) providing for secret ballot elections and majority rule.
3) creating the National Labor Relations Board (NLRB) for enforcing these two provisions.

Prior to passage of the Wagner Act, "the basic struggle of unions was for existence and recognition" (Beach, p. 129). Employers generally were extremely anti-union in their actions and attitudes, looking upon unions as a threat to their basic right to operate their businesses in the manner in which they saw fit. Employers controlled strikes and impeded union activity by obtaining court injunctions (under the rule outlawing business combinations and conspiracies in restraint of trade contained in the Sherman Act, 1890) and by "breaking heads," if necessary. However, due to labor unrest spawned by the Depression, the federal government began to take an interest in labor-management relations, and the labor movement--offically sanctioned by the Wagner Act--began to gain momentum (see Figure 1).

FIGURE I:
TRENDS IN UNION MEMBERSHIP, 1900-1980: TOTAL NUMBER & PERCENT OF LABOR FORCE
(data from Statistical Abstract of the United States, 1976, p. 384)



The next significant development for collective bargaining in the United States occurred in 1947 with passage of the Labor-Management Relations (or Taft-Hartley) Act, which amended the Wagner Act and increased its scope. The primary purposes of this new law were "to regulate and restrict the activities of unions, to protect individual employees and employers against the power of unions, and to attempt to restore a balance of power in labor relations" (Beach, p. 132). Following passage of the Taft-Hartley Act, the labor movement lost some of its momentum (see Figure 1), which--though the movement continued to grow--was never fully recovered. This was due, in part, to the passage of the Landrum-Griffin Act in 1959, which "established the conduct of union officers, and drastically curtailed recognition and organizational picketing" (Beach, p. 135). In addition, the Landrum-Griffin Act amended parts of the Taft-Hartley Act, further restricting the scope of union activity, and slowing down the growth of union membership. Today, with over 22 million workers represented by labor organizations, collective bargaining is a force to be reckoned with. In order to better understand collective bargaining, national legal provisions governing the right to join a union and the right to bargain exclusively need to be examined.

II. THE LEGAL BASIS FOR COLLECTIVE BARGAINING

The Wagner Act provided the framework for present labor laws, including laws governing the right to join a union and the right to bargain exclusively. With the adoption of this law, "public policy became one of encouragement for collective bargaining as preferable to individual bargaining" (Beach, p. 130), and the unionization of employees was encouraged, with provision of secret

ballot elections which compelled employers to bargain with union representatives over wages, rates of pay, hours of work, and other conditions of employment, if employees voted for union representation. To guarantee that employees could actually engage in collective bargaining activities without retaliation by their employers, Section 8 of the Wagner Act included the following unfair labor practices as being "statutory wrongs" (from Dessler, p. 449):

1. wrong for management to interfere with, restrain, or coerce employees in exercising their right of self-organization;
2. wrong for company representatives to dominate or interfere with either the formation or the administration of labor unions;
3. wrong for employers to discriminate in any way against employees for legal union activities;
4. wrong for employers to discharge or discriminate against an employee for filing an unfair practice;
5. wrong for employers not to bargain collectively with union representatives chosen by the employees.

In order to enforce the provisions of the Wagner Act, the National Labor Relations Board (NLRB) was established. The NLRB had two main functions, the first of which was "to conduct representation elections to determine if the employees in a company wish to be represented by a union." Included is the determination of which employees should be included in the bargaining unit and which should not. If a union wins a bargaining election (over 50% of those in the bargaining unit voting for the union), then the NLRB certifies that it shall be the "sole and exclusive bargaining agent" for all of the employees in that unit. The second function of the NLRB was the adjudicating of charges of employer unfair labor practices.

To these laws were added those of the Taft-Hartley Act, which dealt mostly with unfair union practices, and specified the following six activities as being illegal:

1. restraining or coercing employees in the exercise of rights guaranteed under Section 7 of the Wagner Act.
2. causing or attempting to cause an employer to discriminate against an employee in order to encourage or discourage union membership.
3. the union refusing to bargain in good faith.
4. requiring an employer or self-employed person to join a union, forcing an employer to cease handling the products of or doing business with any other person, forcing an employer to bargain with one union when another union is already the certified bargaining agent, and forcing an employer to assign particular work to employees in one union rather than to employees in another union.
5. charging excessive or discriminatory initiation fees.
6. causing or attempting to cause an employer to pay money or other things of value for services that are not performed or to be performed.

In addition, Taft-Hartley excluded supervisors from the definition of employees and included them in management (in terms of the Act's provisions), an action which has the potential to create controversy for higher education in light of recent court cases (see Yeshiva decision comments in the next section).

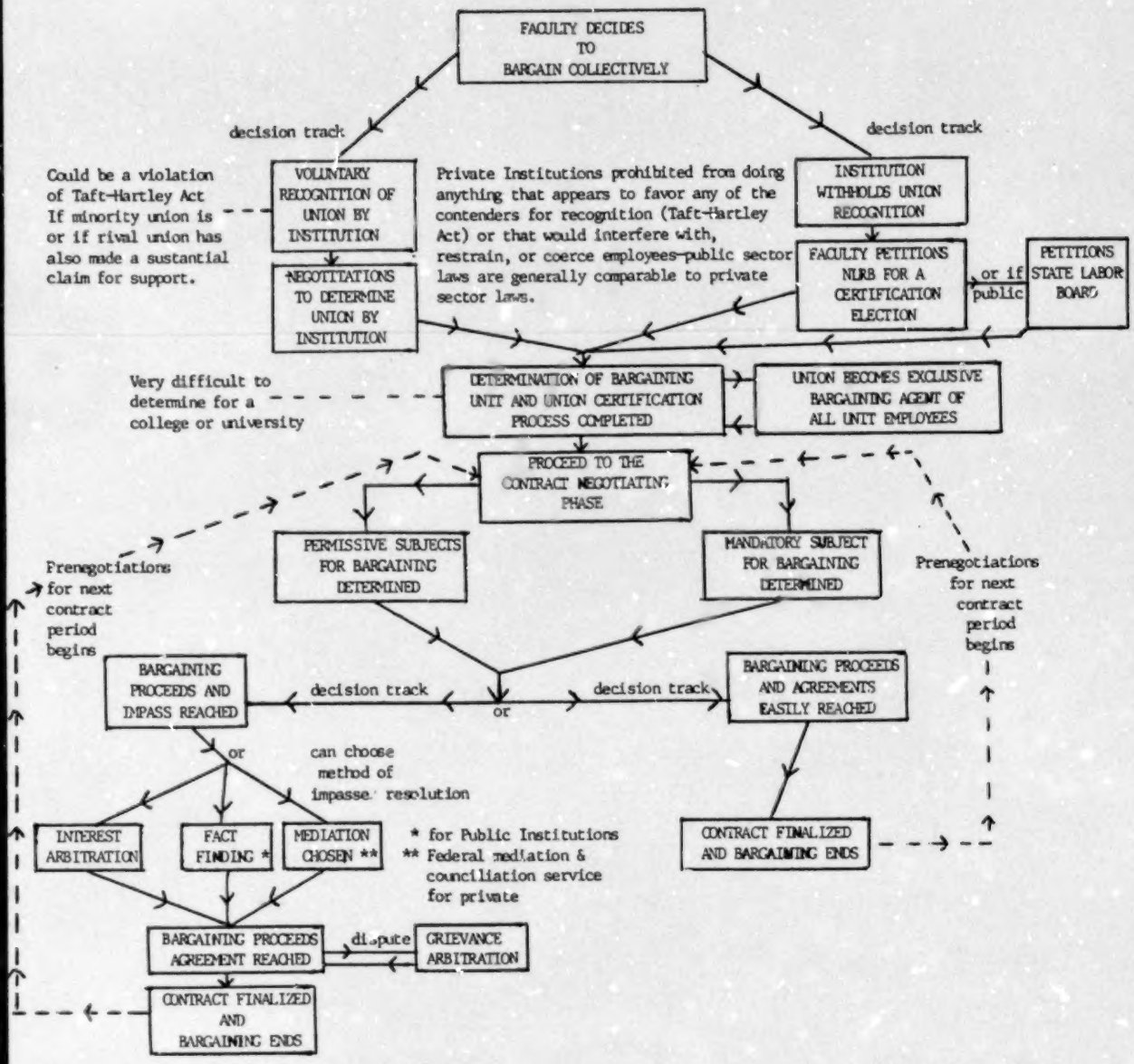
This presentation of labor laws governing participation and exclusive bargainng has been, of necessity, simple. The law--as specified by Federal and state statute--is very complex and not clearly stated, as evidenced by the growing number of court cases dealing with collective bargaining. As Kaplin recommends, "heavy involvement of legal counsel is clearly called for" (Kaplin, p. 96).

III. THE PROCESS OF COLLECTIVE BARGAINING

> Generally speaking, the union and the management must learn to live with one another whether they like it or not. They must accommodate to each other. Under the labor law of the land, once bargaining relationships have been commenced, both sides must honestly seek an agreement. They must bargain in good faith. Dealing cannot arbitrarily be broken off.
>
> (Beach, 128)

In collective bargaining, the bargaining is collective in that the chosen representatives of the employees and the employers act as agents for their respective sides. These management and union representatives sit down at the bargaining table where they deliberate, persuade, argue, haggle, try to influence, and, in general, try to outwit each other. Eventually, an agreement is reached which is duly recorded in form of a labor-management contract, which management usually administers and by which it operates. When employees of the union feel that they are being denied rights under the contract's provisions, they may submit a grievance to management or, if necessary, take their complaint to an impartial arbitrator for a final decision. This, in a nutshell, is what occurs once the two parties in a labor dispute reach the bargaining stage. Prior to this stage, however, a great deal of complex action usually takes place between the union and the employer. Figure II presents a conceptual framework for collective bargaining as it relates to higher education, which should assist the reader in understanding these complex relationships.

FIGURE II: CONCEPTUAL MODEL FOR COLLECTIVE BARGAINING IN HIGHER EDUCATION


FACULTY DECIDES TO BARGAIN COLLECTIVELY
decision track
decision track
Could be a violation of Taft-Hartley Act If minority union is or if rival union has also made a sustantial claim for support.
VOLUNTARY RECOGNITION OF UNION BY INSTITUTION
NEGOTITIATIONS TO DETERMINE UNION BY INSTITUTION
Private Institutions prohibited from doing anything that appears to favor any of the contenders for recognition (Taft-Hartley Act) or that would interfere with, restrain, or coerce employees-public sector laws are generally comparable to private sector laws.
INSTITUTION WITHHOLDS UNION RECOGNITION
FACULTY PETITIONS NLRB FOR A CERTIFICATION ELECTION
or if public
PETITIONS STATE LABOR BOARD
Very difficult to determine for a college or university
DETERMINATION OF BARGAINING UNIT AND UNION CERTIFICATION PROCESS COMPLETED
UNION BECOMES EXCLUSIVE BARGAINING AGENT OF ALL UNIT EMPLOYEES
PROCEED TO THE CONTRACT NEGOTIATING PHASE
PERMISSIVE SUBJECTS FOR BARGAINING DETERMINED
MANDATORY SUBJECT FOR BARGAINING DETERMINED
Prenegotiations for next contract period begins
Prenegotiations for next contract period begins
BARGAINING PROCEEDS AND IMPASS REACHED
decision track
or
decision track
BARGAINING PROCEEDS AND AGREEMENTS EASILY REACHED
or
can choose method of impasse resolution
INTEREST ARBITRATION
FACT FINDING *
MEDIATION CHOSEN **
* for Public Institutions
** Federal mediation & conciliation service for private
CONTRACT FINALIZED AND BARGAINING ENDS
BARGAINING PROCEEDS AGREEMENT REACHED
dispute
GRIEVANCE ARBITRATION
CONTRACT FINALIZED AND BARGAINING ENDS

Subject Matter of Union-Employer Agreements

The concerns which management and union representatives usually discuss include twelve major areas (Beach, p. 142-144)

1. Union recognition and scope of bargaining unit
2. Management rights (management security)
3. Union security
4. Strikes and lockouts
5. Union activities and responsibilities
   a. check-off dues
   b. union officers and stewards
   c. union bulletin boards (for employment notices)
   d. wildcat strikes and slow-downs
6. Wages
   a. general wage adjustments
   b. wage structure
   c. job evaluation
   d. wage incentives and time study
   e. reporting and call-in pay
   f. shift differentials
   g. bonuses
7. Work time and time off policies
   a. regular hours of work
   b. holidays, vacation, and overtime
   c. leaves of absence
   d. rest periods and meal periods

8. Job rights and seniority
    a. seniority regulation
    b. transfers
    c. promotions
    d. layoffs and recalls
    e. job posting and bidding
9. Discipline, suspension and discharge
10. Grievance handling and arbitration
11. Health and safety
12. Insurance and benefit programs
    a. group life insurance
    b. medical insurance
    c. pension program
    d. supplemental unemployment benefits

Stages Involved in Bargaining

A review of the literature suggests that the collective bargaining process involves five basic steps, as follows:

1. prenegotiation stage - should begin as soon as present contract is signed (for the next contract period).
2. selection of negotiators - an organized team or committee is frequently used.
3. strategy of bargaining - each side presents demands; a reduction of demands generally follows; a subcommittee then studies the issues to work out alternatives.

4. negotiating stage; tactics of bargaining - awareness of the other side's strengths and weaknesses; resembles a poker game in this stage, with bluffing and betting through strength; administrators need to avoid being intimidated by the threat of strikes during this phase.

5. the contract agreement - the average contract is 2 - 3 years in length.

Before the negotiating stage of the process can be reached, however, several important events must take place.

First, a need must exist on the part of the employees which management either isn't meeting, or isn't seeming to meet. The employees (for our purposes, faculty members) decide that they desire collective bargaining as a means of meeting their perceived needs. At this point the institution (public or private) may do one of two things;

1) Voluntarily recognize a union.

2) withhold recognition and allow the faculty to petition the NLRB, or the State Labor Board if a public institution is involved, for a certification election.

Following this action, determination of the bargaining unit takes place. This stage, due to the unique features of higher education's employment structure, presents special problems for post-secondary education's institutions. The U.S. Supreme Court in it's Yeshiva decision, for example, determined that faculty members of Yeshiva University were management, and hence ineligible to bargain collectively according to provisions of the Taft-Hartley Act. Therefore, for higher education, the distinction between management and labor remains unclear. Once the bargaining unit has been identified, however, the union certified to represent the bargaining unit becomes the exclusive bargaining agent for all the

unit's employees, whether they desire representation or not, and the contract negotiation phase begins.

The first priority of the two parties in the negotiation stage is the determination of permissive subjects for bargaining (those issues which both parties must agree on as being issues for negotiation) and of mandatory subjects for bargaining (as set forth by Taft Hartley; these are generally the same for public institutions under most state statutes). The latter, which Kaplin (p. 102) describes as the "heart of the collective bargaining process," are issues of wages, hours, and other terms and conditions of employment about which both parties must bargain in good faith, or be guilty of unfair labor practices. The distinction between permissive and mandatory subjects is not clear sometimes, though, due to the fact that "terms and conditions of employment" have never been adequately defined (Kaplin, p. 103). Once these issues have been agreed upon, however, one of two situations can develop, which are:

1. an easy agreement is reached, with the contract finalized and bargaining ended.
2. an impasses is reached.

The first of these two situations is sometimes the case, although not the rule. Generally, the two sides fail to reach accord on at least one substantive issue, and impasse results.

In the private sector, impasse can lead to strikes by the employees of the organization (allowed by Taft-Hartley under certain conditions), while in the public sector "it is almost unanimously regarded as unlawful, either by state statute or state judicial decision, for a public employee to strike" (Kaplin, p. 104). The public sector, instead, has the option of choosing mediation, fact-

finding, or interest arbitration to resolve differences. The private sector has the same option (excluding fact-finding) in lieu of strike. Of these options, mediation has proven to be the most popular (Kaplin, p. 105), with an impartial negotiator helping both sides reach an agreement without actually making the decision for the two sides, as is the case under arbitration.

The final stage in the bargaining process is the finalization of the collective bargaining contract. Once agreement on all issues has been reached, the contract is submitted by the negotiators to their respective constituencies, who usually approve the terms and return the contract to the negotiators for signing. Once finalized, the terms of the contract are binding on both sides, and any disputes that arise thereafter are subject to grievance arbitration. As soon as this contract is finalized, both parties should begin to plan for the next contract negotiation, thereby creating an ongoing process.

IV. TRENDS IN COLLECTIVE BARGAINING IN HIGHER EDUCATION, 1969-1980

As previously stated, collective bargaining in higher education is largely a development of the past decade. However, since 1969, when City University of New York broke the ice, the three major bargaining agents for higher education have made considerable inroads into previously unchartered territory. These three unions, the National Education Association (NEA), the American Federation of Teachers (AFT--an AFL-CIO affiliate), and the American Association of University Professors (AAUP), have managed to steadily increase both the number of institutions involved in collective bargaining as well as the number of faculty members involved. As Figure III illustrates, the trend in total institutional membership has been a steady increase since 1969 (almost linear relationship between time and number of institutions), while the number of faculty members represented by bargaining agents rose dramatically between 1969 and 1973, then continued to climb gradually until 1980 (Figure IV). Indivudally, the NEA has had the most success, growing from being the exclusive bargaining agent for one institution in 1969, to 304 in 1979-80 (data from The Chronicle of Higher Education, the Carnagie Council, 1973 and 1977, and from Kaplin), while the AFT increased its institutional membership from 60 in 1973 to 242 by 1980 and the AAUP from 20 by 1973 to 64 by 1979-80. A comparison of membership in the three major unions for 1973 and 1980 proves interesting. The data are presented in Table I.

FIGURE III: TRENDS IN FACULTY COLLECTIVE BARGAINING, 1969-1980: BY UNION

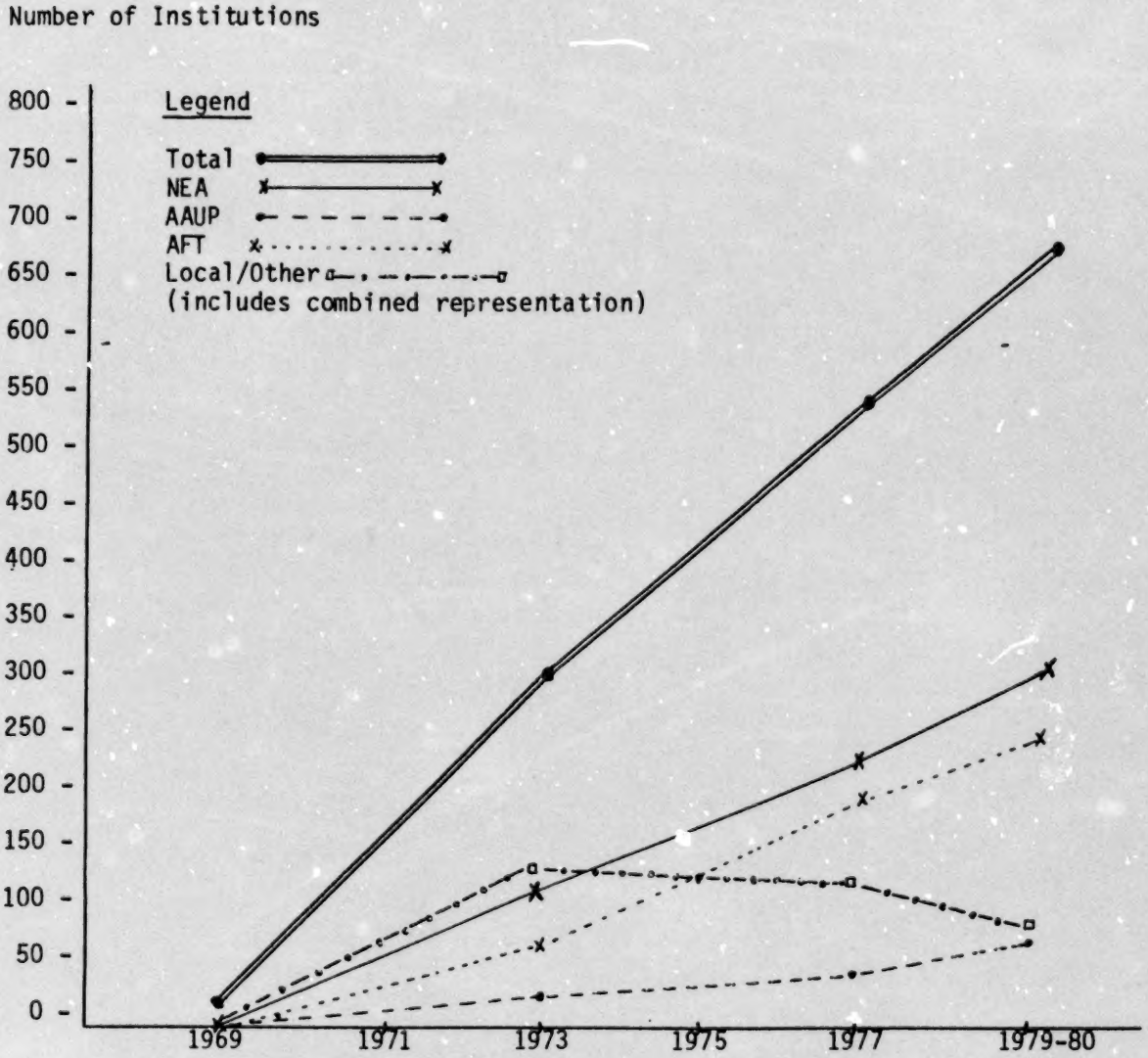


FIGURE IV:
TRENDS IN FACULTY COLLECTIVE BARGAINING, 1969-1980: BY NUMBER OF FACULTY

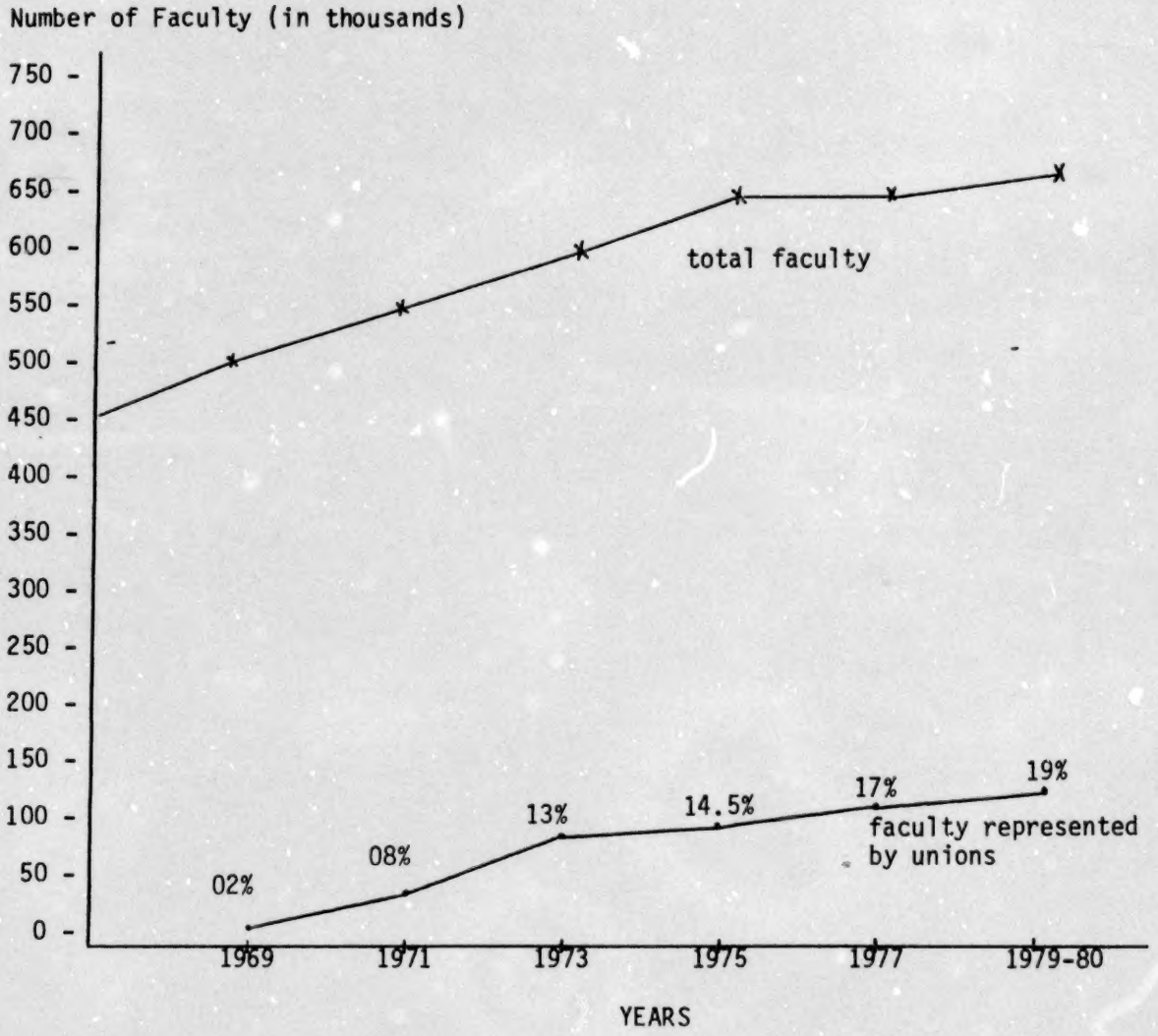


Table I. Comparison of membership in NEA, AFT and AAUP: 1973 and 1980

	4-Year Colleges/Universities				2-Year Colleges[a]			
	Public		Private		Public		Private	
	1973	1980	1973	1980	1973	1980	1973	1980
NEA	10	52	6	16	89	231	3	5
AFT	17	74	2	26	39	136	2	6
AAUP	5	23	12	31	3	9	0	1
LOCAL/OTHER[b]	26	21	0	10	90	39	0	1

[a] Includes community colleges.

[b] Includes combinations of AAUP, AFT and NEA.

The data in Table I. suggests the following conclusions:

1. The NEA has been very successful with public institutions and has had limited success with private institutions.
2. The AFT has had good success with public institutions, and the best success of the three with private institutions.
3. The AAUP has had most of its success with private, 4-year institutions and limited success with the other three classes of institutions.
4. Local/other bargaining associations have lost institutional members in the public sector to a dramatic extent (down from 116 in 1973 to 60 in 1980) but have managed to gain members in the private sector (0 in 1973 to 11 in 1980).
5. Most of the loss reported by the local/other group is probably the result of the national unions (NEA, AFT, AAUP) assuming the bargaining agent role, rather than the discontinuance of bargaining.
6. The overall trend in collective bargaining is that of steady growth, which appears likely to continue in the future.

V. SUGGESTIONS FOR THE COLLEGE ADMINISTRATOR INVOLVED IN COLLECTIVE BARGAINING

> It is generally conceded that dissatisfied employees are most likely to be susceptible to union orgainizing appeals. (Miner, p. 285-286)

In most negotiating situations, the process begins with each side listing demands for contract changes, which represent the desired solution. The essential task of the agents become one of "determining the tolerance limits of the respective parties, thus establising the bargaining zone" (Miner, p. 287). Problems that arise are usually communication problems resulting from faulty perceptions and differences in the personalitites, backgrounds, and motives of the parties, but also include problems associated with the ritualistic nature of the bargaining situation, the need to convey a favorable impression to constituent groups, and the lack of rapport with constituent groups on certain issues. In order to help eliminate, or perhaps alleviate, these potential problem areas the following suggestions are offered to the college administrator faced with collective bargaining (adapted from Richardson, pp. 113-115).

1. Be sure that you have set clear objectives on every bargaining issue.
2. Do not hurry; take time to study each issue individually.
3. When in doubt, caucus with your associates.
4. Be well prepared with firm data supporting your positions.
5. Always strive to keep some flexibility in your position.
6. Don't merely concern yourself with what the other party says and does; find out <u>why</u> they take a certain stance on an issue.
7. Respect the importance of face-saving for the other party.

8. Be constantly alert to the real interests of the other party; pay attention not only to goals, but to priorities.
9. Try to be fair, but firm.
10. Learn to control your emotions; avoid anger and panic.
11. As you make a bargaining move be sure you know its relationship to all other moves.
12. Measure each move against your objectives.
13. Pay close attention to the wording of every clause negotiated.
14. Remember that collective bargaining is a compromise process.
15. Learn to understand people and their personalities.
16. Consider the fact that present negotiations will affect those in future years.
17. Remember that collective bargaining is somewhat like playing poker. To be successful , you have to know not only the game but the habits and skills of the other players, as well.

CONCLUSION

Hopefully, a somewhat clearer picture of collective bargaining and its effect on higher education during the past decade has been presented. Collective bargaining is not only here to stay, but will most likely continue to grow, as faculty members perceive their purchasing power declining relative to the rate of inflation, as they are faced with increasing uncertainty relative to job security, and as they begin to desire more control over their employment situation. The wise administrator in higher education will deal with this situation by becoming as familiar as possible with collective bargaining, and by not hesitating to consult with legal counsel when any doubt arises during the process.

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